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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 22.1.2007.

Smt.Sheela Devi and others ... Petitioners.

vs

Smt.Sunheri and others ... Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Sanjay Verma,Advocate,for the petitioners.

Kiran Anand Lall, J.

The petitioners, who were plaintiffs in the suit, have filed this petition, challenging the order dated 10.10.2006 vide which their application under Order VI Rule 17 CPC for amendment of plaint has been dismissed by the trial court. By the proposed amendment, they wanted to plead that during the life time of Dharam Singh, a family settlement was arrived at between the parties and a compromise/ document dated 23.3.1995 was also brought into existence in this regard.

In the suit, which was filed as early as on 19.3.2001, not only the written statement had been filed, even issues had been framed and the case had entered the stage of petitioners' evidence when they (petitioners) asked for the amendment of plaint so as to enable them to take up the plea that during the life time of Dharam Singh, a family-partition had taken place, on 23.3.1995, and a compromise-deed of even date was also brought into existence.

Initially, in the suit, the petitioners had sought a declaration regarding their ownership to the extent of 1/6th share in the suit land,

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pleading that the gift-deed executed by Sunehri (respondent no.1) wife of late Dharam Singh and the mutation sanctioned on its basis on 10.6.1965 and the two judgments and decrees, both dated 15.4.1972, suffered by her (Sunheri) and her husband, Dharam Singh deceased, respectively, in favour of Rattan Singh (respondent no.2) and mutations sanctioned on their basis were liable to be set aside, being illegal and void and not binding on their rights. By relying upon the compromise/ family partition dated 23.3.1995, by way of the proposed amendment, the petitioners wanted to show that the gift-deed and the judgments and decrees were clearly void, as Dharam Singh, the previous owner, had himself given the suit land to Chand, the late husband of petitioner no.1, in a private partition, on 23.3.1995 i.e. long after the alleged execution of the gift-deed and the passing of the judgments and decrees.

The proviso to Rule 17 of Order VI of the Code of Civil Procedure provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. As stated above, the amendment was applied for, after the case had reached the stage of petitioners' evidence. It could not be satisfactorily explained before the trial court as to why the alleged compromise/ family partition deed dated 23.3.1995 was not produced, or even referred to, earlier. Before this court too, learned counsel could not offer any explanation in this regard. As per the case of petitioners, petitioner no.1 was turned out of her in-laws' house, soon after the death of her father-in-law, Dharam Singh, which took place in the year 1995. That being so, the story that the petitioners had applied for amendment, soon after petitioner

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no.1 found the compromise-deed from her in-laws' house, was clearly bogus, as it is not her case that she had ever visited that house, after she was turned out from there, in the year 1995. Consequently, the plea that inspite of due diligence, the petitioners could not have pleaded the factum of compromise/ family partition before the commencement of trial, fell to the ground. The trial court has, therefore, rightly declined to permit the amendment asked for, after the commencement of the trial.

No merit.

Dismissed.

22.1.2007. (Kiran Anand Lall)
vs. Judge.